

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9258 of 1995

WITH

CIVIL APPLICATION NO.8935 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

BALURAM NAVALRAM PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA for Petitioner

MR DA BAMBHANIA, learned Addl.G.P. for Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 11/12/96

ORAL JUDGMENT :

1. The matter came up before this Court on the Civil Application No.8935/96 filed by the petitioner whereby he has sought the revocation of the suspension order dated 30.10.95 and the interim relief that the further operation and implementation of the suspension order be

suspended.

2. While refusing the interim relief on 22.11.95 it was ordered that in the facts and circumstances of this case, the main petition be listed for final hearing on 15.1.96. Therefore, on the request of both the sides, in the facts and circumstances of this case, the main matter itself is taken up for final hearing today.

3. The petitioner was serving as Armed Police Head Constable. He was assigned guard duty on 1.10.95 at Civil Hospital, Palanpur and 2 other Constables were also assigned the same duty along with the petitioner. The petitioner came with the case that on 3.10.95 he had gone to attend nature's call and during that period one Parbatsingh Bhavansingh of village Nadotra, who was an accused of certain offences and was in custody as an indoor patient in Civil Hospital, Palanpur, was to be taken care of by the petitioner and the 2 other Constables. On 3.10.95 at about 5 A.M. the accused was taken by the Police Constable Babubhai Pitambarbhai to answer the call of nature, the accused pushed Babubhai and escaped from the custody. On account of this incident, the District Superintendent of Police, Banaskantha District at Palanpur passed the order dated 26.10.95 transferring the petitioner at Police Station, Deodar and, thereafter, on 30.10.95 the petitioner was placed under suspension.

4. Aggrieved from the suspension, as aforesaid, the petitioner preferred the present Special Civil Application and also prayed for interim relief. On 22.11.95 after hearing both the sides, the interim relief was declined by a detailed order with the order that the main matter itself may be listed for final hearing on 15.1.96. Against this order dated 22.11.95 the petitioner preferred L.P.A. No.310/95. During the pendency of this L.P.A. the subsequent developments took place in the sense that the two other Constables, who were also assigned the duty along with the petitioner on that very date and had been placed under suspension like the petitioner, were ordered to be reinstated on 6.7.96. However, the petitioner was not reinstated. The petitioner sought to amend the L.P.A. by placing the subsequent facts on record. The proposed amendment was allowed by the Division Bench on 7.8.96 and the petitioner's statement was recorded that in view of the subsequent events and the facts, with a view to approach the single Judge, the petitioner-appellant seeks to withdraw the Appeal. The L.P.A. was accordingly permitted to be withdrawn and disposed of on 7.8.96.

Thereafter, Civil Application No.8935/96 was filed by the petitioner on 15.10.96 with the prayers, to which reference has already been made in the earlier part of the order. There is no denial of the fact that the petitioner is suffering the suspension since 30.10.95. It is the common case of the parties that 2 other Constables, who were assigned the same duty alongwith the petitioner with regard to the custody of accused Parbatsingh, were reinstated on 6.7.96. It is ofcourse true that the petitioner was the Guard Commander as Head Constable and the other 2 employees were Constables, but the photostat copies of the record, which have been produced before this Court at the time of the arguments by the learned Addl. G.P. with regard to the periodical review of suspension cases held on 6.7.96 and thereafter on 3.10.96 show that other 2 constables i.e. Babu Pitambar and Pitambar Vala were ordered to be reinstated on 6.7.96; it was recorded against petitioner's name that he had filed a Special Civil Application in the High Court and that the matter was subjudice. Even on 3.10.96 when the petitioner's suspension was periodically reviewed, it was again mentioned that his Special Civil Application No.9258/95 was pending in the High Court and that he had approached against the order of suspension and the interim relief had been declined by the High Court on 22.11.95. It appears that at the time of the periodical review of suspension cases, the main factor which had prevailed with the reviewing authority is that the petitioner had approached the High Court against the suspension order and the interim relief had been declined by the High Court. In my opinion that by itself could not be a factor to prevail the denial of the reinstatement if the 2 other Constables, who had been assigned same duty, had been ordered to be reinstated. Merely because the petitioner was the Guard Commander as a Head Constable, it can not be said that he was not entitled to be reinstated alongwith other 2 Constables, more particularly when I find that in the reply dated 16.11.95, which has been filed by the Government in this case, it has been categorically stated in para 7 thereof that the accused had managed to escape from the custody and "for that petitioner alongwith two other Constables are answerable and responsible for this acts and omission on the part of the members of the police force and Guard Commander". It is thus clear that it was a case of joint and severable duty and liability of all the three persons. In this view of the matter, while two other members had been reinstated at the time of periodical review, the petitioner should not have been denied the reinstatement merely because he had approached High Court and the interim relief had been denied. Besides this,

Mr.Bambhania submits that the inquiry proceedings against the petitioner and the other 2 members have been going on during the pendency of this Special Civil Application and only 2 or 3 witnesses remain to be examined. It has also been pointed out during the course of the arguments that the accused, who had escaped from the custody, had been arrested and further that he has already been convicted and sentenced for the offence of escaping from the police custody and the main criminal case against him is pending trial for the offence under S.302 I.P.C.

5. Looking to the totality of the facts,I am inclined to direct that the petitioner's suspension should now come to an end and the orders with regard to his reinstatement from suspension may be issued. However, the order with regard to regulating the period of suspension so far and thereafter shall be subject to the final outcome of the inquiry and the appropriate orders, which may be passed by the concerned authorities in accordance with Rules after the inquiry is over. Orders with regard to reinstatement from suspension shall be issued within a period of two weeks.

6. Special Civil Application is accordingly allowed. Rule is hereby made absolute in the terms, as aforesaid, with no order as to costs. Direct service is permitted.

Main matter has been decided today and the Rule has been made absolute. Therefore, no orders are required to be passed in the Civil Application and the Civil Application is accordingly disposed of. Rule is discharged with no order as to costs.